

# Information security and outsourcing guidelines for B.C. financial institutions

The BC Financial Services Authority has issued revised drafts of its information security guideline and outsourcing guideline for provincially regulated financial institutions and pension plan administrators in British Columbia. The guidelines will likely require most regulated entities to make significant changes to their information security and outsourcing policies, practices and procedures and amend existing outsourced services contracts. Regulated entities should now be taking steps to prepare for compliance with the guidelines based on appropriate advice from independent and qualified business, legal and technical experts.

## Information security and outsourcing risks

Information security risks are risks of losses and liabilities suffered or incurred by an organization resulting from a failure or breach of the information technology systems used by or on behalf of the organization or its business partners, including incidents that affect the confidentiality, integrity or availability of sensitive or regulated data in the organization's possession or control. Information security risks can result from internal sources (e.g., employees, contract workers and system failures) or external sources (e.g., hackers, fraudsters and acts of nature). Information security risks are particularly relevant to financial institutions because information technology and data are fundamental to their daily business operations.

Outsourcing risks are risks of losses and liabilities suffered or incurred by an organization resulting from a failure by an outsourced service provider to perform services (including business activities, functions and processes) for

the organization in accordance with contractual requirements and applicable laws. While outsourcing can provide significant benefits to the outsourcing organization, it can also present substantial risks arising from the organization's dependence on the outsourced service provider.

Over the past few years, Canadian financial industry regulators have emphasized the importance of managing information security and outsourcing risks and have issued related guidance for regulated entities. For example, the Office of the Superintendent of Financial Institutions (OSFI) has issued *Guideline B-10: Outsourcing of Business Activities, Functions and Processes*; *Guideline E-21: Operational Risk Management*; *Memorandum: New technology-based outsourcing arrangements*; *Cyber Security Self-Assessment Guidance*; and *Advisory: Technology and Cyber Security Incident Reporting*.

## BCFSA guidelines

The BC Financial Services Authority (“BCFSA”) is the provincial government regulator for financial institutions (i.e., credit unions, insurance companies and trust companies), pension plans and mortgage brokers in British Columbia, and is responsible for enforcing applicable legislation (e.g., *Financial Institutions Act* and *Pension Benefits Standards Act*). In January 2021, BCFSA issued Advisory No. 21-003 to give notice of a consultation process regarding new information security and outsourcing guidelines for provincially regulated financial institutions and pension plan administrators (collectively “PRFIs”). In June 2021, BCFSA issued Advisory No. 21-015 to give notice of revised draft guidelines and a final consultation period ending July 2021. The draft guidelines reflect BCFSA’s view that information security and outsourcing are key risks for PRFIs and their stakeholders.

### Information Security Guideline

The draft Information Security Guideline follows the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework and includes incident reporting obligations similar to those set out in OSFI’s Advisory: Technology and Cyber Security Incident Reporting. Following is a summary of key aspects of the guideline.

- **Principles/expectations:** The guideline establishes high-level principles and specific procedures and practices that PRFIs are expected to implement and follow to mitigate information security (“IS”) risks.
- **Proportionate implementation:** The guideline should be implemented and applied in a risk-based and proportionate manner that considers differences in the nature, scope, complexity, systemic importance and risk profile of each PRFI.
- **Governance:** A PRFI’s governing body (e.g., board of directors or plan administrator) is ultimately responsible for overseeing the prudent management of IS risks. A PRFI’s governing body and senior management are expected to establish and implement specified policies and practices, and allocate sufficient resources, for effectively and appropriately managing IS risks.
- **IS risk management program:** A PRFI is expected to establish and document an effective IS risk management program (including specified policies, procedures and plans) that is integrated into the PRFI’s overall risk management processes and is approved by the PRFI’s governing body and reviewed at least once a year.
- **Identify:** A PRFI is expected to identify and assess IS risks to internal and external systems, people, assets, data and capabilities that enable the organization to achieve business objectives. The guideline specifies risk assessment and identification measures that PRFIs should implement.
- **Protect:** A PRFI is expected to protect its data and information systems in a reasonable and appropriate manner based on the sensitivity, value and criticality of the data and information systems. The guideline specifies security measures that PRFIs should implement.
- **Detect:** A PRFI is expected to establish monitoring processes to rapidly detect IS incidents and periodically evaluate the effectiveness of identified controls, including through network monitoring, testing, audits and reporting. The guideline specifies detection measures that PRFIs should implement.
- **Respond:** A PRFI is expected to plan/develop and implement appropriate actions in response to IS incidents. The guideline specifies incident response processes, procedures and practices that PRFIs should establish and execute.
- **Recover:** A PRFI is expected to plan/develop and implement appropriate activities for resilience, to restore capabilities/services and comply with applicable laws. The guideline specifies recovery plans, policies and practices that PRFIs should establish and execute.
- **Communication with BCFSA:** A PRFI is expected to promptly (within 72 hours) inform the BCFSA of a “major” IS incident and provide the BCFSA with regular status updates. The guideline specifies criteria for determining whether an IS incident is “major” (based on the impact the incident will have on the PRFI’s members, users, consumers and the public) and provides a template for reporting major incidents to the BCFSA.
- **Outsourcing:** A PRFI that outsources information management services is expected to ensure that the outsourced service providers comply with the guideline in their treatment of the PRFI’s information.

## Outsourcing Guideline

The draft *Outsourcing Guideline* is based on OSFI's *Guideline B-10: Outsourcing of Business Activities, Functions and Processes*. Following is a summary of key aspects of the guideline.

- **Principles/expectations:** The guideline establishes high-level principles to be proportionately implemented by all PRFIs and specific procedures and practices that PRFIs are expected to implement and follow to mitigate outsourcing risks. The guideline confirms that a PRFI remains accountable for all activities it outsources to an outsourced services provider.
- **Application/scope:** The guideline applies to all PRFIs (regardless of size) and to every outsourcing arrangement, which the guideline defines as “an agreement between a PRFI and a service provider whereby the service provider performs an activity, function or process that is, or could be, undertaken by the PRFI”. However, the guideline explains that BCFSA’s attention will focus on outsourcing arrangements that are “material or support significant activities of the PRFI”, and BCFSA will use “the principle of proportionality” to adjust its supervisory intensity depending on the “nature, size, complexity, and risk profile of the PRFI and the potential system impact of the PRFI’s failure”.
- **Governance and accountability:** A PRFI’s governing body (e.g., board of directors or plan administrator) is ultimately responsible for all outsourced activities and is expected to support the monitoring, control and management of outsourcing risks through a sound governance structure. A PRFI’s governing body and senior management are expected to establish and implement specific policies, practices and procedures for managing outsourcing risks.
- **Materiality:** A PRFI is expected to develop and implement a process for determining the materiality of each new and significantly changed outsourcing arrangement. All material arrangements should be subject to an outsourcing risk management framework. The guideline specifies relaxed rules for intra-group outsourcing arrangements and requirements and prohibitions regarding outsourcing arrangements with the PRFI’s external auditor.
- **Risk management framework:** A PRFI is expected to ensure its enterprise risk management program appropriately manages and monitors risks commensurate with the materiality of its outsourcing arrangements, with particular attention to business continuity. The guideline specifies requirements relating to business continuity, monitoring and reporting, and location of records.
- **Risk assessments:** A PRFI is expected to identify and assess outsourcing risks on an ongoing basis, periodically assess the vulnerabilities in material outsourcing arrangements and manage the risks in accordance with the PRFI’s risk tolerance. The guideline specifies requirements for the assessments.
- **Due diligence:** A PRFI is expected to conduct initial and ongoing due diligence regarding an outsourcing arrangement to identify and assess risks associated with the arrangement and the service provider, including risks relating to subcontracted outsourced services.
- **Outsourcing contracts:** A PRFI is expected to document outsourcing arrangements with written contracts that address all elements of the arrangement and have been reviewed by the PRFI’s legal counsel. A PRFI is expected to ensure its outsourcing contract addresses all issues relevant to managing the risks associated with the outsourcing arrangement to the extent feasible and reasonable, given the circumstances and having regard to the interests of the PRFI and its stakeholders. The guideline lists the following items to be addressed in contracts for material outsourcing arrangements: (1) nature and scope of services; (2) performance measures; (3) reporting requirements; (4) dispute resolution; (5) defaults and termination; (6) ownership and access; (7) contingency planning; (8) audit rights; (9) subcontracting; (10) pricing; (11) insurance; and (12) confidentiality, security and separation of property.
- **Information security:** A PRFI is expected to ensure its outsourcing service providers comply with all applicable laws (including personal information protection laws) and BCFSA’s Information Security Guideline in the treatment of the PRFI’s data, records and items.

## Preparing for compliance

PRFIs will likely be required to spend significant time and effort to comply with BCFSA’s new information security and outsourcing guidelines. Many PRFIs will be required to make substantial changes to their information security and outsourcing policies, practices and procedures, and amend their outsourced services contracts. PRFIs should begin that process as soon as possible so that required risk-based business decisions can be appropriately informed and advised and required work can be performed in a timely and cost-effective manner. Following are some comments and suggestions.

- **Defensible decisions:** The guidelines contemplate they will be implemented and applied by each PRFI in a risk-based and proportionate manner suitable for the PRFI's particular circumstances and risk profile. That approach will require each PRFI's governing body and senior management to make risk-based business decisions consistent with the PRFI's risk tolerance. For those decisions to be reasonable and defensible, they should be informed (i.e., based on timely, complete and reliable information) and made honestly and in good faith with the benefit of appropriate advice from independent and qualified business, legal and technical experts. See BLG bulletin *Cyber risk management guidance for Canadian corporate directors*.
- **Other legal requirements:** When preparing for compliance with the guidelines, PRFIs should be mindful of other applicable legal requirements, including restrictions and requirements (including breach reporting and notification obligations) imposed by privacy/personal information protection laws, labour/employment laws, and securities laws applicable to reporting issuers (i.e., public companies). See BLG bulletins *Cyber Risk Management – Regulatory Guidance for Reporting Issuers' Continuous Disclosure of Cybersecurity Risks and Incidents*, *Frequently Asked Questions – Compliance with PIPEDA's Security Breach Obligations*, *Privacy Commissioner reports provide guidance for outsourcing agreements*.
- **Additional guidance:** A PRFI's implementation of the guidelines might benefit from consideration of guidance and best practices recommended by Canadian government agencies, regulators, privacy commissioners, industry associations and other organizations. See BLG bulletins *Cyber risk management guidance for Canadian corporate directors*, *Cybersecurity Technical Advisory from Five Eyes Cybersecurity Agencies*, *Cloud services – Guidance for managing cybersecurity risks*, *Financial Industry Regulator Issues Cybersecurity Guidance*, *Managing Insider Risk – Recent Best Practices Guidance*, *Cybersecurity Guidance for Small and Medium Organizations*, *Investment Funds Institute of Canada Issues Cybersecurity Guide*.
- **Legal privilege:** Risk management activities can result in sensitive communications and documents that might be subject to mandatory disclosure in regulatory investigations and litigation unless the communications and documents are protected by legal privilege. Accordingly, PRFIs should take appropriate steps to establish and maintain legal privilege, where appropriate, over communications and documents relating to compliance with the guidelines and to help avoid inadvertent and unnecessary disclosures of legal advice. See BLG bulletins *Cyber Risk Management – Legal Privilege Strategy (Part 1)*, *Cyber Risk Management – Legal Privilege Strategy (Part 2)*.
- **Insurance:** PRFIs should consider whether they have appropriate insurance for losses and liabilities resulting from information security and outsourcing incidents and for claims against directors and officers arising from the performance of their risk management duties and obligations. See BLG bulletin *Insurance for Cybersecurity Incidents and Privacy Breaches*. ■

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